

“No Child Left Behind Requirements for English Learner Assessments”

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The cornerstone of the federal *No Child Left Behind Act* (NCLB)¹ is its focus on assessment and accountability. NCLB requires school districts to provide the same educational opportunities for English Learners to meet the same high academic standards as their peers. In line with federal law that spans decades, NCLB requires states and school districts to help English Learner students make progress each year in two key areas: (1) learning English; and (2) meeting challenging State academic content standards.² NCLB requires states to measure how well school districts are doing in both areas in a valid and reliable way.³

Title III of NCLB focuses on assessment and accountability requirements relating to the first requirement of teaching English Learners the English language. My presentation, however, focuses on the second requirement relating to academic assessments for English Learners, which is addressed in Title I provisions.

¹ 20 U.S.C. §6301, et seq.

² 20 U.S.C. §6311(b) and §6312(g)(1)(A)(v); see also, the Equal Educational Opportunities Act of 1974, 20 U.S.C. § 1703(f); *Lau v. Nichols* (1974) 414 U.S. 563; *Castañeda v. Pickard* (5th Cir. 1981) 648 F.2d 989.

³ 20 U.S.C. §6311(b)(3) and (7).

Title I requires states to adopt challenging academic content standards in content areas that minimally include mathematics, reading or language arts, and science.⁴ It is important to note that nowhere in all of Title I are the words “mathematics,” “reading,” “language arts” or “science” preceded by the word “English”. Thus, these provisions of NCLB do not require or permit states to build an accountability system that evaluates schools or districts based on teaching “English mathematics,” “English reading,” “English language arts,” or “English science”. All of these content areas can be learned in any language and it is the academic content itself that is the focus of Title I in No Child Left Behind’s standards and assessment requirements.

NCLB requires that assessments of proficiency in core academic content areas must actually “measure the proficiency of students” in those academic content areas.⁵ Thus, for English Learners, the academic assessments cannot simply be another measure of the student’s proficiency in the English language. Specifically, the tests used to measure progress of students in meeting academic content standards must be: (1) aligned with the State’s academic content standards; (2) valid and reliable; and (3) consistent with nationally recognized professional and technical standards.⁶

NCLB “assumes that English Learners will not receive valid and reliable scores, accurately measuring their academic achievement, from tests in the English language designed for fluent English speakers.”⁷ Although it is my understanding that Dr. Patricia Gándara will be

⁴ 20 U.S.C. §6311(b) (1).

⁵ 20 U.S.C. §6311(b)(3)(C)(v)(I).

⁶ 20 U.S.C. §6311(b)(3)(c).

⁷ California’s State Expert Panel, September 16-17, 2002 meeting, Agenda Item 1c.

here later this afternoon to discuss testing standards and research, simple logic dictates that if a student does not understand the language of a test, the test results cannot accurately reflect what that student knows in the academic content areas being tested. "A test in English is a test of English."⁸

The solution envisioned under NCLB is evident in its requirement that States provide "reasonable accommodations" on assessments..... "including, to the extent practicable, assessments in the language and form most likely to yield accurate data on what such students know and can do in academic content areas until such students have achieved English language proficiency".⁹

NCLB allows states to measure academic proficiency of LEP students by means other than tests written in English; provided that states must administer tests written in English in the content area of reading/language arts for students who have attended United States schools for three or more consecutive years, unless a school district determines that the student is still not proficient in English and that a test written in another language would yield more accurate results, in which case, NCLB allows an extension for up to two additional years.¹⁰

Thus, a critical component of an inclusive system for English Learners identified in NCLB is for states to "provide an alternative system of standards-based assessments in each student's primary language, insofar as this is practical."¹¹ NCLB expressly allows children to

⁸ Dr. Eugene Garcia, former member of the State Public School Accountability Act Committee, who resigned as a committee member in November 1999 in public protest over the decision by the State Board of Education to implement an accountability system that he viewed as invalid and fatally flawed for one-fourth of California's public school students, that is, students with limited English proficiency.

⁹ 20 U.S.C. §6311(b)(3)(C)(ix)(III).

¹⁰ 20 U.S.C. §6311(b)(3)(C)(x).

¹¹ California's State Expert Panel, September 16-17, 2002 meeting, Agenda Item 1c.

demonstrate their academic competence in any language and presumes that within three to five years they will develop sufficient English language skills to be able to demonstrate their academic competence in English.¹²

To facilitate the development of this type of inclusive system, NCLB requires that states “identify the languages other than English that are present in a participating student population and indicate the languages for which yearly student academic assessments are not available and are needed;” requires that states “make every effort to develop such assessments”; and allows states to “request assistance from the Secretary (of Education) if linguistically accessible academic assessment measures are needed.”¹³

Despite NCLB’s unmistakable language, California requires English Learners to be tested for academic knowledge only in English, whether they understand it or not. All tests used to calculate both the Academic Performance Index as well as Adequate Yearly Progress under NCLB, including the California Standards Tests and the California High School Exit Exam, were designed for fluent English speakers and they are administered to all students in English only. Please note that NCLB does not require states to have high school exit exams – this is purely a matter of state policy. NCLB does, however, require states to administer a test at the high school level which measures student progress in meeting academic standards. California chooses to use the CAHSEE to meet this NCLB requirement and as long as it is being used for NCLB purposes, it too must meet NCLB requirements.

Pursuant to SB1448, which amended Education Code Section 60640 to require development of a standards-aligned academic achievement test for reading/language arts and

¹² 20 U.S.C. §6311(b)(3)(C)(x).

¹³ 20 U.S.C. §6311(b)(7).

mathematics in the most common primary language of English Learners, the State Board of Education did contract with a test publishing company in 2005 to develop standards-aligned academic tests in Spanish for grades 2 through 4. It is my understanding that these tests will be ready to be administered next school year. These tests, however, will only be required to be administered to newcomer students who have been enrolled in California schools for less than 12 months and to students in bilingual programs, but the results will not be used to calculate API rankings or Adequate Yearly Progress under NCLB.

With respect to accommodations on the English-only tests, none at all were offered to English Learner students until after the U.S. Department of Education in 2001 found California out of compliance with the precursor to NCLB, the *Improving America's Schools Act*, in the area of English Learner testing, focusing particular attention on California's failure to offer accommodations to English Learners.

Thereafter, the State Board of Education adopted certain limited accommodations for English Learners.¹⁴ Most of these are borrowed from accommodations offered to special education students and do not address the problem faced by English Learners – that is, the language barrier in understanding and responding to test questions. Those accommodations include flexible settings, flexible schedule and flexible time. The two accommodations authorized by the State Board of Education that are specific to English Learner needs, translated test directions and glossaries, are not standardized for statewide application but are merely allowable for use by school districts if these districts choose to do the translations or create the glossaries themselves and are permissible only to the extent these accommodations are regularly used in the students' classrooms or for assessments in that district. The result is striking – less than 5% of English Learner students taking the tests use any of the accommodations listed in the

¹⁴ Title 5, California Code of Regulations, sections 853.5(f) (CSTs) and 1217 (CAHSEE).

State Board's regulations. The annual California Standardized Testing Program Technical Reports as well as the Final Audit Report of the Office of Inspector General of the U.S. Department of Education published in October 2005 entitled "California's Inclusion of Migrant and Limited English Proficient Students in the Statewide Assessment and Accountability System," both show that more than 95% of the English Learner students taking the California Standards Tests and the California High School Exit Exam, all administered in English, do not use *any* accommodations. Furthermore, I am unaware of any empirical research considered by the State Board of Education indicating that the accommodations it selected would be effective in assisting English Learners to accurately demonstrate what they know and can do in academic content areas, even if they were actually used by the students.

NCLB recognizes English Learners as a specific category of students needing special treatment in the implementation of assessments. Under both state and federal law these students are defined by their low performance on academic tests administered in English. Under NCLB English Learners or "limited English proficient" students are defined as those whose native language is a language other than English and "whose difficulties with speaking, reading, writing or understanding the English language, may be sufficient to deny the individual the ability to meet the State's proficient level of achievement on State (academic) assessments".¹⁵ Under State law, students who reach fluency in English are no longer defined as English Learners [that is they are reclassified] as soon as they are able to demonstrate their academic proficiencies in English. By definition, these students are not expected to score well on academic tests administered in English, yet these are the only tests we use in California to label classrooms, schools and districts with large numbers of these students as underperforming.

Since the inception of the Standardized Testing and Reporting (STAR) program legislation in 1997¹⁶, the State Board of Education has justified the State testing system for

¹⁵ 20 U.S.C. §7801(25).

¹⁶ Education Code Section 60640 et seq.

English Learners through its insistence that our California legislature is concerned only with the ability of children to demonstrate their academic abilities in English. The State Board has rationalized a strict policy of every student taking English-only tests based in large part on its interpretation of your intent as expressed through the Standardized Testing and Reporting program and the Public School Accountability Act legislation¹⁷. If the legislative intent in California is to hold districts accountable both for teaching English Learners English and for teaching academic content separate and apart from language proficiency, then this legislative intent needs to be conveyed to the State Board of Education and it would be helpful to have clear legislative intent language in any omnibus bills addressing assessments.

Senator Denise Ducheny has authored legislation (SB1580) that would help California build the kind of inclusive accountability system envisioned by NCLB that contains meaningful assessments to gauge the academic progress of English Learners while they are still learning English. It would require the standards-aligned test in Spanish to be administered not only to newcomer students but also to students who are receiving academic instruction in Spanish and would require these tests to be used in the accountability system for the length of time allowed under NCLB. It further requires the State to ensure that the tests administered to English Learners in English have been modified for second language learners to reduce unnecessary linguistic complexity, without reducing the rigor of the academics being tested, in order to maximize the opportunity for these students to express what they know and can do in academic content areas. Thank you for giving me the opportunity to make this presentation and for the critical work you are doing for the children of California.

¹⁷ Education Code Section 52050 et seq.